**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**CIVIL APPELLATE JURISDICTION**

**WRIT PETITON NO.7302 OF 2006**

M/s. Shagun Processors Pvt.Ltd. ..Petitioner.

V/s.

Union of India & Ors. ..Respondents.

Mr.Ashok Singh for petitioners.

Mr.A.S. Rao with Ritu Singh for respondents.

**CORAM : H.L.GOKHALE AND**
**J.P.DEVADHAR, JJ.**

**DATED : 9TH NOVEMBER, 2006.**

**P.C. :-**

. Heard Mr.Singh in support of the petition. Mr.Rao appears for the respondents. This petition seeks to challenge the order dated 4th April, 2006 passed by the Customs, Excise and Service Tax Appellate Tribunal, Mumbai rejecting the petitioner's application for restoration of Appeal No.E/846/2004 which came to be dismissed in default on 10th November, 2005. Mr. Singh points out that there were genuine difficulties in not remaining present on 10th November,2005. The director of the petitioner is said to have expired on 30th October, 2005 and thereafter his mother is stated to have expired in November,2005. All these difficulties added to the fact that the factory itself was not working. Mr.Singh submits that 10th November, 2005 was the only date when nobody was present for the petitioner. Therefore, he prayed to take a lenient view and restore the appeal.

2. Mr.Rao appearing for the respondents submits that the petitioner was not required to make any pre-deposit in this appeal and now, he is no longer interested in prosecuting the appeal diligently.

3. We have noted the objections of Mr.Rao. Even so considering the difficulties pointed out by the petitioner and also considering the fact that it was the only date when nobody was present for the petitioner, we accept the submissions of Mr.Singh and set aside the order dated 4th April, 2006 whereby the restoration application came to be rejected. Accordingly, appeal No.E/846/2004 will stand revived to the file of the Appellate Tribunal. That will however on payment of costs. Petitioner will pay costs of Rs.25,000/- for restoration of the appeal. Petitioner to deposit this amount with the concerned department within 4 weeks from today and only on deposit of the amount, the appeal would stand restored.

4. Petition stands disposed of accordingly.

**(H.L.GOKHALE, J.)**

**(J.P.DEVADHAR, J.)**